

Sent: Wednesday, August 7, 2019 9:55 AM  
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Subject: DUI Case Review and DUI Court- Sussex County CCP

Your Honors,

Thank you for your response to our e-mail. We look forward to further discussion with the Court.

With respect to the effectiveness of DUI case review, below are the plea percentages for CCP DUI Case Review in New Castle County in 2018 and 2019 (to date) and Kent County in 2019 (to date):

**New Castle, 2018**

DUI pleas at Case Review- 19.6% (218/1107)

**New Castle 2019 (to date)**

DUI pleas at Case Review- 22.7% (93/408)

**Kent 2019 (to date)**

DUI Pleas at Case Review- 18.2% (60/328)

These numbers show that Case Review is an effective tool for resolution of a significant number of cases, clearing about one-fifth of all DUI cases. Moreover, Case Review is a mechanism for discussion of issues affecting the resolution of cases prior to the trial date. While the discussion of a resolution may begin at Case Review, the plea takes place on either a plea-by-appointment calendar or trial calendar. That plea would not be attributed to the Case Review in the numbers above, although the use of Case Review played a significant role in the result--that is, the percentages above likely understate the effectiveness of Case Review. As you know, Case Review streamlines the pre-trial process and fleshes out pre-trial issues so that the trial date is focused on its goal--trials.

In addition, our concerns regarding recidivism and repeat DUI offenders remain. Below is a summary by county of individuals arrested for DUI while on probation for DUI in 2017 and 2018:

County	2017	2018
Kent	48	72
New Castle	99	71
Sussex	112	107
Total	259	250

These numbers are troubling. New Castle County has the most comprehensive DUI case review plan, as well as a DUI Court. Despite the much larger population, they were able to effect an approximately 30% reduction in DUI arrests of DUI offenders while on probation. Meanwhile, the numbers in Sussex County remained relatively static.

However, DUI offenders who re-offend while on probation is a smaller population than those who re-offend after probation is completed. The chart below summarizes by county DUI first time and repeat arrests in 2017 and 2018:

2017 DUI Counts	Kent	New Castle	Sussex	Total
First Time DUI Arrests	400	1028	1095	2523
Repeat DUI Arrests	286	466	696	1448

Total DUI Arrests	686	1494	1791	3971
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2018 DUI Counts	Kent	New Castle	Sussex	Total
First Time DUI Arrests	414	964	1037	2415
Repeat DUI Arrests	344	508	693	1546
Total DUI Arrests	758	1472	1731	3961

Again, despite having a significantly smaller population and fewer police officers than New Castle County, Sussex County had more repeat arrests by a substantial margin. As we have previously stated, with repeat offender numbers this large, a Case Review is a necessity to streamline the Court's calendar prior to the morning of trial and allow for meaningful information exchange, including mitigation, regarding potential treatment options.

Moreover, this repeat offender population faces mandatory jail time in Sussex County instead of the opportunity for focused treatment due to the lack of a DUI Court. Case Review coupled with DUI Court will permit the State and defense to make informed decisions that will be best for the treatment of the offender and for public safety.

When we discussed a follow-up meeting previously, it was the State's understanding that the next meeting would take place no later than mid-August. The Court suggested a meeting in early September in its e-mail. These DUI issues are a paramount concern and require an expedited resolution.

Please be advised that the State intends to begin indicting all DUI cases in Superior Court beginning on September 23, 2019. Even if this date passes without a resolution, the State will continue discussions with the Court to return misdemeanor DUI cases to the Court of Common Pleas once an appropriate Case Review and DUI Court have been established. As a reminder, we have requested something close to how the other two counties operate:

1. A DUI-specific Case Review, mandatory for both parties, with arraignment no less than 75 days after arrest; Case Review no less than 45 days after arraignment, and trial no less than 45 days after Case Review.

2. A DUI Court which, as Your Honors suggested, could be combined with Kent County's existing DUI Court.
3. Pretrial motions that require the specificity set forth by *State v. Russell*, 2003 WL 21998966 (Del. Super. 2003).
4. No more than 10 DUI cases scheduled for trial on a single day.

If you have any questions, please do not hesitate to contact me.

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David Hume, IV  
Chief Prosecutor- Sussex County  
114 East Market Street  
Georgetown, Delaware 19947  
302-752-3216- direct dial

Mr. Hume:

September 4, 2019

Thank you for meeting with the Court to discuss the challenges your office is facing regarding DUI cases in Sussex County. As you know, the Court is committed to its objective of ensuring the efficient and expeditious disposition of criminal cases. Certainly, it is the Court's intent to achieve this goal without imposing gratuitous burdens on the parties, and we believe that further discussion of the concerns you raised would be beneficial. To that end, we wanted to provide responses and additional context to some of the issues you touched upon in your written correspondence and during the meeting:

- **Statistical Information.** A number of the points you raised stem from caseload and disposition data. We have begun analyzing and comparing with the Court's internal data, and it appears that our analysis is not consistent with those provided by your office. In addition, you have relied heavily upon FY 2017 data, which does not provide an accurate picture of current numbers and Court practices. As you know, FY 2017 was an extremely atypical, watershed year in which JP Court lost DUI trial jurisdiction mid-year, resulting in a unique tidal wave of DUI cases for CCP, and your office. We have taken several major steps since then to adjust to the new caseload, and to accommodate your office's concerns. Those steps and adjustments are reflected in the FY 2018 and 2019 data, which is readily available, and which should be used in any analysis of current processes and needs. Given the significance of this data as a driving force underlying many of your office's suggestions, this difference is of particular importance. We would like to arrange a meeting with someone in your office familiar with this data to discuss the discrepancies.
- **DUI Court.** The Court agrees that Sussex County would benefit from a DUI Treatment Court program similar to the programs already in place in New Castle and Kent counties. However, such a program is simply not feasible with the resources currently available to the Court. The Court has continually requested the resources necessary to operate a DUI Treatment court in Sussex County, but our efforts thus far have not been successful. We continue these efforts in our 2021 budget submission.

Importantly, if the DAG were to shift its filing of Sussex County DUI cases to Superior Court, it would have a substantial negative effect on the Court's ability to obtain additional resources, effectively precluding the Court from establishing a DUI Treatment Court program in Sussex County. As you alluded to in your correspondence, the DUI Treatment Court in New Castle and Kent counties has proven especially effective at reducing recidivism. According to a 2014 National Highway Traffic Safety Administration study, the national DUI recidivism rate at that time was 25%. The DUI recidivism rate in Delaware was found to be even higher than the national rate, at 35%. Although still a

relatively new program, as of June 2019 the recidivism rate of participants in the New Castle and Kent counties' DUI Treatment Court is less than 2%—eminently lower than the State and national rates.

Given the program's demonstrated benefit to the public, the Court is earnestly seeking additional resources to establish a DUI Treatment Court in Sussex County. In the meantime, the Court is currently evaluating alternative processes by which certain qualifying DUI offenders in Sussex County cases could participate in the DUI Treatment Court program in Kent County. The Court has been in contact with CCP Kent, and Probation and Parole, and we believe it will be possible to implement the availability of DUI Court for Sussex defendants via Kent CCP status hearings by the end of this Fall.

- **Case Review.** At this time, given the limited resources available to the Court, it is logistically not plausible to establish a case review calendar without a demonstrated quantitative analysis that such calendar will result in resolution of cases. We have and continue to request additional resources to accommodate a case review calendar but, as with our request for resources to establish a DUI Treatment Court, our efforts thus far have not been successful. Further, based on the Court's internal data, there is no indication that a case review calendar would actually alleviate the DAG's heavy caseload. We would like to discuss this and other potential caseload-abating measures after we have opportunity to review the underlying data with your office. Please be aware, however, that even if a DUI Case Review is implemented, the Court cannot currently accede to your request that "arraignment [be] no less than 75 days after arrest; Case Review no less than 45 days after arraignment, and trial no less than 45 days after Case Review." Appendix D-2 of the Delaware Supreme Court's *Operating Procedures for the Delaware Judicial Branch* restates and continues the requirements of the original Supreme Court Administrative Directive #130, in effect since July, 2001. It states that, for the Court of Common Pleas, "[a]ll criminal cases shall be adjudicated as to guilt or innocence or otherwise disposed of within 90 days from the date of filing of the information." Informations must be filed by the date of arraignment; thus *all* criminal cases must be disposed of within 90 days of arraignment. You essentially request that the Court schedule DUI trials more than 90 days after arraignment, which would be a *per se* violation of a Supreme Court directive. Any increase in that mandatory deadline is a policy for the Chief Justice to set. We have raised the issue with our Chief Judge and President Judge Jurden for possible discussion with the Chief Justice.
- **Evidentiary/Discovery Issues.** The Court appreciates the complex discovery issues unique to DUI cases. However, the implication that judicial interference is the only means of avoiding "gotcha" trial tactics is completely unfounded. As Delaware attorneys, the Court expects that counsel will engage in good faith efforts to resolve discovery issues prior to Court action, and will only turn to the Court if such good faith efforts are

unsuccessful. This approach seems particularly appropriate in the specific instances you referenced in your correspondence. The Court's limited resources simply cannot accommodate the parties using the Court as the on-field referee to all discovery disputes. Instead, the Court encourages the DAG to develop internal procedures to address such issues.

Inasmuch as the Court believes the data discrepancies must be resolved before further discussion of the conclusions to be drawn therefrom, and the solutions of any demonstrated problems, the Court will reschedule the September 6, 2019 meeting for September 27, 2019 at 11:00 am. We hope that the data discrepancies can be addressed in the interim by the appropriate staff. Since the Defense Bar representatives were invited to this rescheduled meeting, and participated fully in our previous discussions on this issue, we have copied them on this response, and your prior email. The Court looks forward to further discussion with you regarding these issues.

Sincerely,

Judge Rosemary Betts Beauregard

Judge Kenneth S. Clark, Jr.

**From:** Roop, Albert J (DOJ)

**Sent:** Tuesday, September 10, 2019 5:58 PM

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**Subject:** Re: DUI Case Review and DUI Court- Sussex County CCP

Dear Judge Beauregard:

Thank you for your letter. We're disappointed we could not make progress on the concerns we raised with the Court and reach a resolution. In our view, public safety is at risk if we continue the current course. As we noted in our prior meeting, and subsequent correspondence, the Department of Justice will begin indicting DUI cases in Sussex County in Superior Court on September 23, 2019. Based on the foregoing, we respectfully submit holding a meeting that has been re-scheduled twice until after our proposed September 23rd indictment deadline would not be fruitful, and therefore unnecessary.

Respectfully,

AJ Roop

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**From:** Beauregard, Rosemary (Courts)

**Sent:** Wednesday, September 4, 2019 4:29:03 PM

**To:** Hume, David (DOJ)

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**Subject:** RE: DUI Case Review and DUI Court- Sussex County CCP